

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WEI TANG CHEN,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendants,

Case No. C05-5275RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
JULY 8th, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Plaintiff has paid the filing fee and is not proceeding *in forma pauperis*. (Dkt. May 13th, 2005 entry receipt # 513258).

Plaintiff challenges his current criminal conviction in this action. (Dkt. # 1 proposed complaint and memorandum in support). When a person confined by the state is challenging the very fact or duration of his physical imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Heck v. Humphrey, 114 S.Ct. 2364, 2373 (1994). Plaintiff is filing a collateral challenge to the legality of his continued confinement in this action and this action must proceed by way of habeas corpus.

CONCLUSION

This action relates to the propriety of current confinement. For the reasons stated above the action should be **DISMISSED WITHOUT PREJUDICE** prior to service. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **July 8th, 2005**, as noted in the caption.

DATED this 8th, day of June, 2005.

/S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge